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JAN 05 2011

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF AN APPLICATION) No. 10-6004
FOR REINSTATEMENT OF A SUSPENDED)
MEMBER OF THE STATE BAR OF ARIZONA,)

TIM D. COKER,
Bar No. 007022

) **DISCIPLINARY COMMISSION**
) **REPORT**

APPLICANT.)
_____)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on December 11, 2010, pursuant to Rules 64 and 65, Ariz.R.Sup.Ct., for review of the Hearing Officer's Report filed November 1, 2010, recommending reinstatement, two years of probation with the State Bar's Member Assistance Program ("MAP") consistent with the prior Agreement for Discipline by Consent in File Nos. 08-0630, et al., and costs.

The Commission requested oral argument. Applicant and counsel for the State Bar were present. The State Bar does not oppose the reinstatement.

Decision

Having found no facts clearly erroneous, the eight members¹ of the Commission unanimously recommend adopting and incorporating by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation that Applicant Tim D. Coker be reinstated to the practice of law, be placed on probation (MAP) for a period of two years,

¹ Commissioner Belleau did not participate in these proceedings.

1 and pay costs of these proceedings including costs incurred by the Disciplinary Clerk's
2 office.² The terms of probation are as follows:

3 **Terms of Probation**

4 1. Applicant's term of probation shall begin to run on the effective date of his
5 reinstatement and shall terminate two years thereafter.

6 2. Applicant shall contact the Director of MAP within thirty (30) days of the
7 date of the order of reinstatement. If deemed appropriate by the Director, Applicant shall
8 submit to a new MAP assessment. Otherwise, the MAP assessment conducted by the
9 Director regarding applicant's current voluntary MAP contract may be relied upon in lieu of
10 a new assessment. The Director of MAP shall develop "Terms and Conditions of
11 Probation" and the terms shall be incorporated herein by reference. The MAP terms shall
12 include terms for random drug testing throughout the probation period. Applicant shall be
13 responsible for any costs associated with MAP.
14

15 3. The State Bar shall report material violations of the terms of probation
16 pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty (30)
17 days to determine if the terms of probation have been violated and if an additional sanction
18 should be imposed. The burden of proof shall be on the State Bar to prove non-compliance
19 by a preponderance of the evidence.
20

21 **Background**

22 Applicant was suspended effective August 23, 2009 in File No. 08-0630 et al., for
23 violating ERs 1.7(a), 1.8(a), 1.8(e), 1.16, 8.4(b) and 8.4(d). Two years of probation (MAP)
24 upon reinstatement was also imposed.
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26
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² A copy of the Hearing Officer's Report is attached as Exhibit A.
28

1 In the underlying matter, Applicant engaged in a conflict of interest by entering into
2 a business transaction with a client and acquiring an ownership interest adverse to the
3 client. Applicant failed to advise the client to seek independent counsel and to obtain
4 informed consent. Applicant further pled guilty on September 3, 2008, to one count of
5 Possession of Drug Paraphernalia, a class 6 undesignated felony.³ Respondent was fined
6 and sentenced to one year of probation.⁴ On January 9, 2009, Applicant also pled guilty to
7 misdemeanor DUI. Both convictions arose from the same incident/arrest in November
8 2007.
9

10 Applicant is currently employed by the Pascua Yaqui Legal Services, a legal aid law
11 firm for members of the Pascua Yaqui Tribe as a paralegal and if reinstated, will be
12 employed there as an attorney.
13

14 Discussion of Decision

15 Regarding rehabilitation, Applicant provided evidence at the hearing that he
16 participated in 13 treatment sessions with psychologist Dr. William Graff between January –
17 August 2008. See Hearing Exhibit D and E. Applicant relapsed in the summer of 2008 after
18 he injured his back. Applicant then began voluntary drug testing at the direction of Dr. Gaff.
19 Applicant testified that since August 28, 2008, he has not used alcohol or controlled
20 substances other than the prescribed medications since his spinal surgery on November 17,
21 2008. In February 2009, Applicant voluntarily participated in MAP and fully complied with
22 the contract, which included random drug testing.
23
24

25 ³ The Court granted Applicant's motion for early release from probation and the offense was
26 designated a misdemeanor.

27 ⁴ Applicant was required to attend 80 hours of group counseling at Community Bridges, perform 20
28 hours of community service, pay fines and probation fees, submit to random drug testing, and regular
visits with his probation officer. Applicant was compliant with the terms of his probation.

1 Applicant provided proof in the form of several witnesses that he has done
2 extraordinarily well in terms of treatment for his addiction issues and has demonstrated
3 dedication to remaining sober. Applicant is attending re-lapse preventing counseling, and is
4 attending to his physical and spiritual health. He also volunteers at a juvenile detention
5 center organizing groups on substance abuse recovery.
6

7 The record supports that through treatment and education, Applicant has identified his
8 weaknesses and problems with past behaviors associated with codependency, including self
9 esteem and compliance patterns and that his past experiences with drugs initially relieved
10 these symptoms. The Hearing Officer found that Applicant has proven by clear and
11 convincing evidence that he has to the degree applicable met all requirements regarding
12 reinstatement including rehabilitation competence, compliance and fitness to practice
13 pursuant to Rule 65. Applicant has further identified the causes of his prior misconduct and
14 clear and convincing evidence of his rehabilitation consistent with *In re Arotta*, 208 Ariz.
15 509, 96 P.3d 213 (2004).
16

17 Conclusion

18 The Hearing Officer found that Applicant has met his burden of proof pursuant to
19 Rule 65(b)(2). The Commission agrees and adopts the Hearing Officer's recommendation
20 for reinstatement, two years of probation (MAP) and payment of costs of these proceedings.
21

22 RESPECTFULLY SUBMITTED this 5 day of January 2011.
23

24
25 Pamela M. Katzenberg-Chen
26 Pamela M. Katzenberg, Chair
27 Disciplinary Commission
28

1 Original filed with the Disciplinary Clerk
2 this 5th day of January 2011.

3 Copy of the foregoing mailed
4 this 7 day of January 2011, to:

5 Tim D. Coker
6 Applicant
7 Pascua Yaqui Legal Services
8 905 S. Avenida del Yaqui
9 Guadalupe, AZ 85283-2529

10 and

11 Tim D. Coker
12 Applicant
13 10433 E. Jacob Ave.
14 Mesa, AZ 85209

15 Amy K. Rehm
16 Deputy Chief Bar Counsel
17 4201 N. 24th Street, Suite 200
18 Phoenix, AZ 85016-6288

19 Copy of the foregoing hand delivered
20 this 7 day of January 2011, to

21 Hon. Louis Araneta
22 Hearing Officer 6U
23 1501 W. Washington, Suite 104
24 Phoenix, AZ 85007

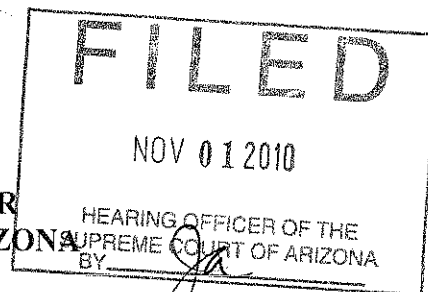
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EXHIBIT A

BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF AN APPLICATION FOR)
REINSTATEMENT OF A SUSPENDED MEMBER)
OF THE STATE BAR OF ARIZONA,)

TIM D. COKER,
Bar No. 007022

APPLICANT.

No. 10-6004

HEARING OFFICER'S
REPORT

PROCEDURAL HISTORY

1. On June 10, 2010, Tim D. Coker (hereafter "Applicant") filed his Motion for Reinstatement with the Supreme Court of Arizona. On September 7, 2010, the hearing was held. Present at the hearing were Bar Counsel Amy K. Rehm, Applicant, and this Hearing Officer.

2. This case involves a request for reinstatement after Applicant was suspended for one year effective August 23, 2009, based on his conviction for possession of drug paraphernalia, a class 6 undesignated felony and based on other misconduct involving ERs 1.7(a), 1.8(a), 1.8(e) and 1.16. The procedure and standards under Rule 65, Ariz. R. Sup. Ct.¹ apply.

3. At the conclusion of the hearing, State Bar counsel agreed with the Motion and recommended reinstatement.

¹ Ariz. R. Sup. Ct. will hereafter be referenced with "Rule" followed by the relevant rule's numerical designation.

FINDINGS OF FACT

3. Applicant, age 54, was first admitted to practice law in the state of Arizona on October 17, 1981.²

4. On July 24, 2009, the Supreme Court of Arizona suspended Applicant, from practice for a period of one year, beginning August 23, 2009. Judgment and Order of the Supreme Court of Arizona, No. SB-09-0054-D; Exhibit 1. The Judgment and Order adopted the prior Report of the Disciplinary Commission of the Supreme Court of Arizona, Nos. 08-0630 and 08-1379. Exhibit 2. The Disciplinary Commission Report accepted the prior Hearing Officer's Report, filed February 27, 2009, in Case Nos. 08-0630 and 08-1379. The prior Hearing Officer had concurred with the parties' Tender of Admissions and Agreement for Discipline. Exhibit 3.

5. The suspension was based on a two-count complaint. The most serious misconduct was Applicant's possession of illegal drugs and DUI which occurred in November, 2007.³ Applicant had been in a one vehicle accident. He was charged in superior court with 5 counts of possession of controlled substances on June 6, 2008, and with DUI in city court on August 21, 2008, all arising from the same incident. Exhibit 3.

6. On September 3, 2008, pursuant to a plea agreement in superior court, Applicant pleaded guilty to possession of drug paraphernalia, an undesignated Class 6 felony, in exchange for dismissal of the other possession charges. He was fined and sentenced to one (1) year probation. Exhibits 4 and 5.

² Motion for Reinstatement filed June 10, 2010. Unless otherwise noted, the facts are taken from the transcript of the hearing or exhibits admitted.

³ The other misconduct involved Respondent's unsuccessful efforts to avoid the foreclosure of his bankruptcy client's home in which he had provided financial assistance to the client, failed to provide notice or obtain permission prior to terminating representation, and failed to protect the client's interest. There was no actual injury. Exhibit 3.

7. On January 9, 2009, Applicant pleaded guilty to the misdemeanor DUI charge in city court. Thereafter, he successfully completed all the terms of his city court misdemeanor including: (a) an alcohol assessment; (b) all of his treatment recommendations; (c) 24 hours in jail; (d) temporary suspension of driving privileges; and (e) the installation of an ignition interlock device. The ignition interlock device recorded more than 4500 breath tests over a one (1) year period, all of which showed no alcohol content in Applicant's breath. Exhibit J.

8. On March 23, 2009, the superior court granted Applicant's motion for early release from probation on the undesignated felony conviction for possession of drug paraphernalia based on his successful completion of all terms of probation. His offense was also designated a misdemeanor. Exhibit 6.

9. At the hearing, Applicant provided substantial evidence concerning his rehabilitation, fitness to practice, competence, and compliance with discipline orders pursuant to Rule 65. Although Applicant was suspended from the practice of law effective August 23, 2009, he provided detailed information about his rehabilitation efforts starting from his arrest in November, 2007 forward to his attaining and maintaining sobriety through the present.

10. After his arrest in November 2007, Applicant participated in an initial evaluation by psychologist Dr. Carlos Jones on December 30, 2007. He was referred to psychologist Dr. William Graff with whom he had approximately 13 treatment sessions between January and August, 2008. Transcript of Hearing ("T'H") 98: 9-17; Exhibit D (records of Dr. Graff); Exhibit E (records of Dr. Jones).

11. After his arrest in November, 2007 and before his plea agreement in September, 2008, Applicant had three relapses in the summer of 2008. His first two relapses were approximately in May or June 2008, after he injured his back. He had tried to work the NA

steps without a sponsor, but found the fourth step to be difficult and began to see his former fellow drug user Heidi. He reported his relapses to Dr. Graff who directed Applicant to begin voluntary drug testing. Applicant testified that his last relapse involved alcohol only on August 27, 2008. He testified that since August 28, 2008, he has not used alcohol or controlled substances other than the prescribed medications after his spinal decompression surgery on November 17, 2008. T/H 118:1-119:18.

12. After his sentencing on September 3, 2008, Applicant began his superior court probation supervision with Probation Officer Arliss Cook. As requirements of probation, Applicant had to: (a) attend 80 hours of group counseling at Community Bridges; (b) perform 20 hours of community service; (c) pay fines and probation fees; (d) submit to random drug testing; and (e) visit regularly with his probation officer. T/H 121:17-124:19. In his affidavit, Probation Officer Arliss Cook states that Applicant complied with every requirement of his probation and had no positive drug test results. Exhibit C.

13. Applicant's counselor at Community Bridges was Carol Preuit, a licensed substance abuse counselor. Ms. Preuit testified that Applicant attended every session, except for two or three sessions when he was hospitalized for his spinal surgery, and participated fully in each session. Ms. Preuit testified that the three most important ingredients of successful recovery from drug addiction are honesty, open-mindedness, and willingness to follow directions and suggestions. She testified that these qualities were evident in Applicant. Transcript, pages 13-16. The records of Ms. Preuit from Community Bridges are Exhibit B. Those records were also regularly submitted to Arliss Cook. T/H 16:17-21.

14. Counselor Ms. Preuit also suggested that Applicant regularly attend twelve step meetings and obtain a sponsor. Applicant followed this advice. Unlike his first attempt

when he had no sponsor, Applicant obtained a sponsor and by November 2008 had begun to work the twelve steps of Narcotics Anonymous. T/H 15:11 – 16:10.

15. Applicant's NA sponsor, Sam Holmgren, testified that Applicant is presently working on the tenth step and that Applicant has complied with his sponsor's suggestions by regularly attending meetings, working the steps, participating in service work, and maintaining contact with his sponsor. T/H 53:12-70:5. Mr. Holmgren candidly testified that Applicant was supposed to call him every day, but has called on average about 5 times per week. T/H 65:2 –13. Otherwise, Applicant has been perfect in complying with his sponsor's requirements. T/H 63: 2-6. Mr. Holmgren testified that an addict can stop using drugs, lose the desire to use, and find a new way to live, and that the experience of NA demonstrates that those who, like Applicant, work the steps and regularly attend meetings stay clean. T/H 62:4-15.

16. Sam Holmgren described each of the steps in NA that create an attitude that allows addicts to abstain from using substances. Applicant's step work for each of the nine steps he has completed to date was submitted as Exhibit G1.

17. One of Sam Holmgren's suggestions to Applicant was to get involved in service work. Applicant followed through by chairing weekly speaker meetings for the Hospitals and Institutions Committee of Narcotics Anonymous. For over a year, Applicant has chaired monthly speaker meetings held at such institutions as the East Valley Men's Center, a halfway house, and the New Leaf Juvenile Detention Facility. Applicant arranges for the speaker at each meeting. T/H 59:1- 60:14.

18. By January, 2009, Applicant had substantially wound down his private practice in anticipation of his suspension by the Supreme Court of Arizona. In January, 2009 Applicant began working for Pascua Yaqui Legal Services, a legal aid law firm for members of the Pascua Yaqui Tribe. T/H 74:10- 16.

19. Yvonne Ayers, the Director of Pascua Yaqui Legal Services testified that she hired Applicant knowing that his suspension was likely and imminent. Applicant's bankruptcy skills and knowledge were needed in her Guadalupe office because she had been unable to fill the attorney position in that office for several months. She attended his prior discipline hearing and was fully aware of his prior misconduct. She testified that she kept track of Applicant's progress on probation and when he would be eligible to file his motion to designate his offense as a misdemeanor. T/H 76:17- 79:5.

20. When Applicant was suspended by the State Bar of Arizona, Applicant was retained by Ms. Ayers and Pascua Yaqui Legal services as a paralegal. He has continued to be so employed. T/H 79:6-88:12. He will again be employed as an attorney by Pascua Yaqui Legal Services if reinstated. T/H 89:5-90:6. Applicant testified that he hopes and intends to stay with Pascua Yaqui Legal Services if he is reinstated. TH 130:12- 22.

21. Ms. Ayers testified that when employed as an attorney, Applicant represented the clients of Pascua Yaqui Legal Services in an extremely competent manner. T/H 75:22-76:16. When Applicant was suspended, his performance as a paralegal thereafter was both helpful and exemplary. Ms. Ayers testified that Applicant's organizational, law office management, and documentation skills have improved steadily through his tenure with Pascua Yaqui Legal Services. She stated that Applicant regularly provides assistance to her staff and that he attended 23 hours of continuing legal education classes during his suspension, kept excellent notes, and shared what he learned with her staff. T/H 79:6 - 88:12.

22. In February, 2009, Applicant contacted Hal Nevitt, the State Bar Director of the Lawyer's Member Assistance Program, to voluntarily sign up for the Member Assistance Program (MAP). Applicant testified that he did so to keep his recovery from addiction moving forward in anticipation of his release from probation. Applicant signed a contract

with MAP and Hal Nevitt that required him to submit to random UA and hair follicle drug testing, hire a counselor to assist in relapse prevention, have regular contact with Mr. Nevitt and an assigned State Bar monitor, and attend at least two twelve step meetings per week. T/H 34:16- 35:19. Applicant's twelve step meeting attendance sheets were submitted as Exhibit G1 and his initial evaluation was submitted as Exhibit A.

23. Mr. Nevitt testified that Applicant fully complied with his MAP contract and that all of Applicant's drug tests were negative. Mr. Nevitt also testified that one year of abstinence from drugs results in a person being diagnosed as substance-dependent in full sustained remission. At the time of the hearing in September, 2010, Applicant had been clean from drugs slightly more than two years. T/H 38:1-14.

24. Beyond her role to serve as counselor for 80 hours of group counseling at Community Bridges as part of probation, Applicant later voluntarily hired Carol Preuitt as his relapse prevention counselor. He met regularly with Ms. Preuitt as she determined appropriate for more than a year. Ms. Preuitt testified that Applicant completed each assignment in her relapse prevention workbook, a copy of which was submitted as Exhibit F. They regularly discussed Applicant's life issues and twelve step work. Ms. Preuitt testified that Applicant remained fully engaged and willing to follow directions and suggestions as his relapse prevention counselor. T/H 19:22-23:5; 24:23-25:23.

25. Applicant testified about the tools that he has gained from his rehabilitation that he will use to maintain his sobriety. He will continue attending twelve step meetings, working the twelve steps, and performing service work for NA. He testified that he has identified and become aware of his own weaknesses or susceptibilities from treatment with Drs. Jones and Graff, the group counseling at Community Bridges, his relapse prevention counseling, twelve step literature, and from his independent reading and research. He identified problems due to past behaviors associated with codependency, including self

esteem and compliance patterns, and that his past experimentation with drugs afforded at first a feeling of acceptance and relief from these symptoms. T/H 98:9-100:12.

26. Applicant also testified that he came to understand that the treatment for his addiction and codependency lay in educating himself about the nature of his codependency and addiction and the past behaviors that gave rise to them. He has developed and practiced ways of living his life to address the causes of his past behaviors. He has joined and regularly attends codependents anonymous meetings. He testified that working the twelve steps are part of that process, as well as his spiritual practices and health related activities, including medical and dental care, a healthy diet, regular exercise at the gym, yoga classes, and keeping up with his family activities and duties at home and work. T/H 100:20- 104:18.

27. Applicant submitted that he has complied with all of the requirements of the Judgment and Order of the Supreme Court and Rule 72, as demonstrated by his evidence and that he was ready to be reinstated. Counsel for the State Bar concurred. T/H 135: 15-136:10.

CONCLUSIONS OF LAW

28. Pursuant to Rule 65 (b) (2), this Hearing Officer finds that Applicant has proven by clear and convincing evidence his rehabilitation, compliance with discipline orders, fitness to practice, and competence. Consistent with the ruling in *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004), Applicant identified the causes of his prior misconduct and brought forth “clear and convincing evidence showing the positive actions he has taken to overcome the weaknesses that led to his [suspension].” *Id.* At 515, 219.

RECOMMENDATION

29. Applicant has met and exceeded the requirements to prove his rehabilitation. Without exception since November, 2008, he has practiced the twelve step program as a vehicle for change and adopted in his words a “way of being” to live his personal and

professional life. With the help of his support system including the Director of his office, Ms. Ayers, Applicant has learned to live a more balanced life. Ms Ayers described Applicant as follows: "I don't think we have just a superficial change in behavior. I think we have somebody who has really done his work, done his self-reflection, and has made some internal changes that I think are lasting." T/H 95:1- 5.

30. This Hearing Officer recognizes that there are no guarantees when a suspended lawyer is reinstated. However, if ever an applicant has done what can be done to minimize the recurrence of misconduct, it is Applicant Tim D. Coker.

31. Based on the facts of this case, this Hearing Officer recommends to the Disciplinary Commission that Applicant be reinstated as an active member of the Arizona State Bar and be placed on probation for a period of two years consistent with Applicant's prior Agreement for Discipline in No. 08-0630 and No. 081379. Probation shall include the following terms and conditions:

a. Applicant's term of probation shall begin to run on the effective date of his reinstatement and shall terminate two years thereafter;


b. Applicant shall contact the director of the State Bar's Member Assistance Program (MAP) within 30 days of the date of the order of reinstatement. If deemed appropriate by the director, Applicant shall submit to a new MAP assessment. Otherwise, the MAP assessment conducted by the director regarding applicant's current voluntary MAP contract may be relied upon in lieu of a new assessment. The director of MAP shall develop "Terms and Conditions of Probation" and the terms shall be incorporated herein by reference. The MAP terms shall include terms for random drug testing throughout the probation period. Applicant shall be responsible for any costs associated with MAP.

c. In the event that Applicant fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall

file a Notice of Noncompliance with the imposing entity, pursuant to Rule 60 (a)(5). The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Applicant failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by preponderance of the evidence.

d. Applicant shall also pay all costs incurred by the Disciplinary Clerk's Office and the Supreme Court in this matter.

DATED this 1 day of November, 2010.


Hon. Louis Araneta
Hearing Officer 6U

Original filed with the Disciplinary Clerk
this 1 day of November, 2010.

Copy of the foregoing mailed
this 1 day of November, 2010, to:

Tim Coker
Pascua Yaqui Legal Services
9405 S. Avenida del Yaqui
Guadalupe, AZ 85283-2529
Applicant

Tim Coker
10433 E. Jacob Ave.
Mesa, AZ 85209
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by: Deann Barb

/jsa